

Before the
Copyright Royalty Board
United States Copyright Office
Washington, D.C. 20540

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AUG 11 2009

Copyright Royalty Board

In the Matter of)
)
Distribution of DART Sound Recordings)
Fund Copyright Owners)
Subfund Royalties For 2008)

Docket No. 2009-3 CRB DD 2008

**AARC’S RESPONSE TO THE REPLY TO THE AARC: INDIVIDUAL CLAIMANT
SOUND RECORDING FUND/COPYRIGHT OWNERSHIP¹**

The Alliance of Artists and Recording Companies (“AARC”), on behalf of itself and ROIR Records, VP Records, Kosmic Daydream, Eric N. Burns, Eric N. Burns D.B.A. Art Seigner, Herman Kelly, Fred James, Sylar, the Process, J Rad, Barry Cohen, Joel Evan, Kettle Joe, Kosmic Daydream, Nation, John Kazian, Neptune, Vanessa Thomas and JC Records (collectively referred to as “the Settling Parties”), submits this Opposition to the Tajai Music Inc./Eugene “Lambchops” Curry (“TAJAI”) *Reply to the AARC: Individual Claimant Sound Recording Fund/copyright ownership*,² on the basis that it is procedurally defective and fails to establish that over 2% of the Sound Recordings Fund/Copyright Owners Subfund royalties remain in controversy.

¹ AARC’s counsel will be out of town during the period of August 12 through 23, 2009. Therefore, AARC respectfully requests that it be granted leave to file any other pleadings in this proceeding, which may be due during her absence, by the end of the week of August 24, 2009.

² Based on the title of and the arguments in TAJAI’s pleading, it is unclear as to its purpose. Nowhere in its pleading does TAJAI oppose AARC’s request for partial distribution. However, in an abundance of caution and in an attempt to ensure that the CRB has a complete record regarding this matter, AARC submits this pleading.

I. TAJAI's Pleading is Procedurally Defective

On August 10, 2009, AARC received a copy of the TAJAI Music Inc. *Reply to the AARC: Individual Claimant Sound Recording Fund/copyright ownership*. This pleading appears to be in response to AARC's request for partial distribution, which was filed on July 21, 2009. TAJAI's pleading is dated August 5, 2009 and was not served on AARC until August 10, 2009. Pursuant to the Copyright Royalty Board's ("CRB") regulations, oppositions and replies are due five and four days respectively. 37 C.F.R. § 350.4(f) (2009). TAJAI's pleading, whether an opposition or a reply as it is titled, was due either July 27 or 28. This makes the pleading 7 to 8 business days late if it in fact was filed on August 5, 2009.

TAJAI's pleading was not only filed and served late, it was incomplete. The pleading refers to documents that support TAJAI's allegation that it sold 1,000,000 units during 2008. However, these documents were not included in the copy served on AARC.

Based on this series of procedural mistakes, TAJAI's pleading should be denied as procedurally defective.

II. TAJAI's Pleading Must Be Denied Because it Fails to Refute the Settling Parties' Entitlement to Partial Distribution of 98%

Assuming that TAJAI's pleading is accepted by the CRB, irrespective of its procedural problems, it should be denied based on TAJAI's failure to refute the Settling Parties' position on partial distribution. TAJAI takes issue with the Settling Parties' statement that the 2008 SoundScan sales data does not list sales for TAJAI, Lambchops or Eugene Curry. TAJAI argues that it "had 1 million *sic* at least of the song used on Atlantic and Sony's artist." This statement is baseless since, according to the pleading served on AARC, TAJAI has presented no evidence of

sales, nor has it even identified titles sold. In fact, TAJAI's argument regarding these missing sales is best presented and tested at a hearing before the CRB sometime in the future.

The issue currently before the CRB is whether 98% of the 2008 DART/Sound Recordings Fund/Copyright Owners Subfund is **not** in controversy and so should be distributed pursuant to CRB authority. Copyright Royalty and Distribution Reform Act, 17 U.S.C. § 801(b)(3)(A) (2008); *See also, Distribution of DART Sound Recordings Fund Copyright Owners Subfund Royalties For 2008, Docket No. 2009-3 CRB DD 2008, Notice of Settlement and Request for Partial Distribution of the 2008 DART/Sound Recordings Fund/Copyright Owners Subfund Royalties*, Sections II, III, (July 21, 2009). TAJAI has presented no evidence to contradict the Settling Parties' position that 98% of the Copyright Owners' subfund royalties are not in controversy.

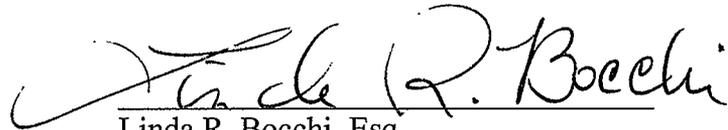
Nonetheless, even assuming that TAJAI's claims can be substantiated, which the Settling Parties highly doubt, TAJAI would be entitled to .08173% (.0008173).³ Since the Settling Parties requested only 98% of the subfund, the remaining 2% should more than cover any claims TAJAI can prove at hearing.

³ As stated in the Settling Parties' request for partial distribution, the Copyright Owners Subfund claims total 1,223,490,142 units. TAJAI's sales of 1,000,000 units represent .08173% (1,000,000/1,223,490,142) of the total Copyright Owners' subfund. This assumes that the universe does not increase by the 1,000,000 sales that TAJAI alleges should be attributed to it. If we were to add another 1,000,000 TAJAI units, TAJAI's percent would be even smaller.

III. Conclusion

WHEREFORE, for the reasons set forth above, the Settling Parties respectfully request that the CRB deny TAJAI's pleading and promptly issue a partial distribution of 98% of the 2008 Sound Recordings Fund/Copyright Owners Subfund to AARC, as agent for the Settling Parties.

Respectfully submitted,
On Behalf of the Settling Parties

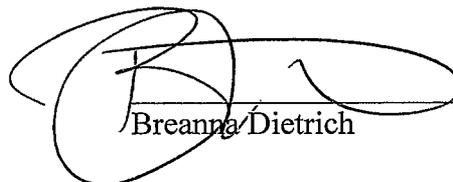


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August 11, 2009

CERTIFICATE OF SERVICE

I, Breanna Dietrich, Deputy Director of Royalties of the Alliance of Artists and Recording Companies, certify that on this August 11, 2009, a copy of the foregoing "AARC's Response to the Reply to the AARC: Individual Claimant Sound Recording Fund/Copyright Ownership" was served, by the designated delivery method, on the following parties:



Breanna Dietrich

BY OVERNIGHT MAIL

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